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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LOUIS FLOYD and JEFFREY)	Case No. 3:21-cv-5548
KATZ , individually and on behalf of)	
all others similarly situated,	)	<u>CLASS ACTION</u>
)	
Plaintiff,	)	COMPLAINT FOR VIOLATIONS
	)	OF:
vs.)	
	)	1. NEGLIGENT VIOLATIONS OF
	)	THE TELEPHONE CONSUMER
	)	PROTECTION ACT [47 U.S.C.
WENIG HOLDINGS LLC DBA	)	§227 ET SEQ.]
INSURANCESERVICES4U.COM;	)	2. WILLFUL VIOLATIONS OF THE
DOES 1 through 10, inclusive,	)	TELEPHONE CONSUMER
	)	PROTECTION ACT [47 U.S.C.
	)	§227 ET SEQ.]
Defendant(s).)	
	)	<u>DEMAND FOR JURY TRIAL</u>

Plaintiffs, LOUIS FLOYD and JEFFREY KATZ ("Plaintiff"), on behalf of themselves and all others similarly situated, allege the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action for himself and others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of WENIG HOLDINGS, LLC ("Defendant"), in negligently, knowingly, and/or willfully contacting Plaintiff via "telephone facsimile machine"

1 in violation of the Telephone Consumer Protection Act, 47 *U.S.C.* § 227 *et seq.*
2 (“TCPA”), thereby causing Plaintiff and all others similarly situated to incur the
3 costs of receiving unsolicited advertisement messages via “telephone facsimile
4 machines” and invading their privacy.

5 **JURISDICTION & VENUE**

6 2. Jurisdiction is proper under 28 *U.S.C.* § 1332(d)(2) because Plaintiffs,
7 residents of California, seek relief on behalf of a Class, which will result in at least
8 one class member belonging to a different state than that of Defendant, a company
9 with its principal place of business and State of Incorporation in Florida state.
10 Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the
11 TCPA, which, when aggregated among a proposed class in the thousands, exceeds
12 the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity
13 jurisdiction and the damages threshold under the Class Action Fairness Act of 2005
14 (“CAFA”) are present, and this Court has jurisdiction.

15 3. Venue is proper in the United States District Court for the Northern
16 District of California pursuant to 28 *U.S.C.* § 1391(b)(2) because Defendant does
17 business within the state of California and Plaintiffs reside within this District.

18 **PARTIES**

19 4. Plaintiff, LOUIS FLOYD, is a natural person residing in Santa Clara
20 County, California and is a “person” as defined by 47 *U.S.C.* § 153 (39).

21 5. Plaintiff, JEFFREY KATZ, is a natural person residing in San
22 Francisco County, California and is a “person” as defined by 47 *U.S.C.* § 153 (39).

23 6. Plaintiffs, LOUIS FLOYD and JEFFREY KATZ will hereinafter be
24 referred to collectively as “Plaintiffs.”

25 7. Defendant, WENIG HOLDINGS (“Defendant” or “DEFENDANT”),
26 is a marketer of health insurance plans, and is a “person” as defined by 47 *U.S.C.*
27 § 153 (39).

28 8. The above named Defendant, and its subsidiaries and agents, are

collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

9. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

10. Beginning in or around July 2019, Defendant contacted Plaintiffs on their telephone facsimile numbers ending in -8670 and -3052 in an effort to sell or solicit its services.

11. On or around or around July 18, 2019 Defendant contacted Plaintiff LOUIS FLOYD on his telephone facsimile number ending in -8670 in an effort to sell or solicit its services.

12. On or around July 8, 2020 Defendant contacted Plaintiff JEFFREY KATZ on his telephone facsimile number ending in -3052 in an effort to sell or solicit its services.

13. Defendant’s messages constituted “telephone solicitation” as defined by the TCPA, 47 U.S.C. § 227(a)(4) and “unsolicited advertisement” as defined by the TCPA, 47 U.S.C. § 227(a)(5).

14. Defendant used an “telephone facsimile machine” as defined by 47 U.S.C. § 227(a)(3) to place its calls to Plaintiff seeking to sell or solicit its business

1 services.

2 15. Defendant's calls constituted calls that were not for emergency
3 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

4 16. Defendant's calls were placed to telephone facsimile numbers
5 assigned to a telephone service for which Plaintiff incurs a charge for incoming
6 messages.

7 17. Plaintiffs are not customers of Defendant's services and have never
8 provided any personal information, including their telephone facsimile number(s),
9 to Defendant for any purpose whatsoever. Accordingly, Defendant never received
10 Plaintiffs' "prior express consent" to receive calls using a telephone facsimile
11 machine pursuant to 47 U.S.C. § 227(b)(1)(C).

12 **CLASS ALLEGATIONS**

13 18. Plaintiffs bring this action on behalf of themselves and all others
14 similarly situated, as members of the proposed class (hereafter "The Class")
15 defined as follows:

16 All persons within the United States who received any
17 telephone facsimile messages from Defendant to said
18 person's telephone facsimile number made through the
19 use of any telephone facsimile machine and such person
20 had not previously consented to receiving such messages
21 and such messages did not contain any opt-out notice
22 within the four years prior to the filing of this Complaint

23 19. Plaintiffs represent, and are members of, The Class, consisting of All
24 persons within the United States who received any telephone facsimile messages
25 from Defendant to said person's telephone facsimile number made through the use
26 of any telephone facsimile machine and such person had not previously not
27 provided their telephone facsimile number to Defendant within the four years prior
28 to the filing of this Complaint.

1 20. Defendant, its employees and agents are excluded from The Class.
2 Plaintiffs do not know the number of members in The Class, but believes the Class
3 members number in the thousands, if not more. Thus, this matter should be certified
4 as a Class Action to assist in the expeditious litigation of the matter.

5 21. The Class is so numerous that the individual joinder of all of its
6 members is impractical. While the exact number and identities of The Class
7 members are unknown to Plaintiffs at this time and can only be ascertained through
8 appropriate discovery, Plaintiffs are informed and believe and thereon allege that
9 The Class includes thousands of members. Plaintiffs allege that The Class members
10 may be ascertained by the records maintained by Defendant.

11 22. Plaintiffs and members of The Class were harmed by the acts of
12 Defendant in at least the following ways: Defendant illegally contacted Plaintiffs
13 and Class members via their telephone facsimile numbers thereby causing
14 Plaintiffs and Class members to incur certain charges or reduced telephone
15 facsimile time for which Plaintiffs and Class members had previously paid by
16 having to retrieve or administer messages left by Defendant during those illegal
17 calls, and invading the privacy of said Plaintiffs and Class members.

18 23. Common questions of fact and law exist as to all members of The
19 Class which predominate over any questions affecting only individual members of
20 The Class. These common legal and factual questions, which do not vary between
21 Class members, and which may be determined without reference to the individual
22 circumstances of any Class members, include, but are not limited to, the following:

- 23 a. Whether, within the four years prior to the filing of this Complaint,
24 Defendant sent telephone facsimile messages (other than for
25 emergency purposes or made with the prior express consent of the
26 called party and with an opt-out notice contained in the messages) to
27 a Class member using any telephone facsimile machine to any
28 telephone number assigned to a telephone facsimile service;
- b. Whether Plaintiff and the Class members were damaged thereby, and
the extent of damages for such violation; and

1 c. Whether Defendant should be enjoined from engaging in such conduct
2 in the future.

3 24. As people who received numerous messages from Defendant using a
4 telephone facsimile machine, without Plaintiffs' prior express consent, Plaintiffs
5 are asserting claims that are typical of The Class.

6 25. Plaintiffs will fairly and adequately protect the interests of the
7 members of The Class. Plaintiffs have retained attorneys experienced in the
8 prosecution of class actions.

9 26. A class action is superior to other available methods of fair and
10 efficient adjudication of this controversy, since individual litigation of the claims
11 of all Class members is impracticable. Even if every Class member could afford
12 individual litigation, the court system could not. It would be unduly burdensome
13 to the courts in which individual litigation of numerous issues would proceed.
14 Individualized litigation would also present the potential for varying, inconsistent,
15 or contradictory judgments and would magnify the delay and expense to all parties
16 and to the court system resulting from multiple trials of the same complex factual
17 issues. By contrast, the conduct of this action as a class action presents fewer
18 management difficulties, conserves the resources of the parties and of the court
19 system, and protects the rights of each Class member.

20 27. The prosecution of separate actions by individual Class members
21 would create a risk of adjudications with respect to them that would, as a practical
22 matter, be dispositive of the interests of the other Class members not parties to such
23 adjudications or that would substantially impair or impede the ability of such non-
24 party Class members to protect their interests.

25 28. Defendant has acted or refused to act in respects generally applicable
26 to The Class, thereby making appropriate final and injunctive relief with regard to
27 the members of the California Class as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

29. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-28.

30. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

31. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiffs and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

32. Plaintiffs and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

33. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-28.

34. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

35. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiffs and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

36. Plaintiffs and the Class members are also entitled to and seek

injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiffs and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B); and
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiffs and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

37. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiffs reserve their right to a jury on all issues so triable.

Respectfully Submitted this 20th day of July, 2021.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff